

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 19 2021

FOR THE NINTH CIRCUIT

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U.S. COURT OF APPEALS

ALEJANDRO RODRIGUEZ; et al.,

No. 20-55770

Petitioners-Appellees,

D.C. No.

2:07-cv-03239-TJH-RNB

v.

WILLIAM P. BARR, Attorney General; et  
al.,

MEMORANDUM\*

Respondents-Appellants.

Appeal from the United States District Court  
for the Central District of California  
Terry J. Hatter, Jr., District Judge, Presiding

Submitted October 15, 2021\*\*  
Pasadena, California

Before: WARDLAW and GOULD, Circuit Judges, and HADDON,\*\*\* District  
Judge.

The United States appeals the district court's order refusing to dissolve the

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Sam E. Haddon, United States District Judge for the  
District of Montana, sitting by designation.

permanent injunction previously entered despite the subsequent vacatur of the underlying judgment. We have jurisdiction to hear this appeal under 28 U.S.C. § 1292(a)(1). We remand this case to the district court with instructions to vacate the permanent injunction.

1. The district court misinterpreted our opinion in *Rodriguez v. Marin* (*Rodriguez IV*), 909 F.3d 252, 256 (2018) as an instruction to keep the permanent injunction in place. In *Rodriguez IV* we stated that: “Like the Supreme Court, we do not vacate the permanent injunction pending the consideration of these vital constitutional issues.” 909 F.3d at 256. The district court interpreted that sentence as “instructions” to keep “the permanent injunction in place pending the consideration of the constitutional issues” which it was “obligated to follow.” As a result, it denied the government’s motion to vacate the permanent injunction.

We wish to resolve that misunderstanding. We did not intend to instruct the district court to maintain the permanent injunction based on plaintiffs’ now-defunct statutory claims indefinitely. Instead, we indicated that we did not lift the injunction at the appellate level, like the Supreme Court, but were remanding for the district court to do so when it considered how it planned to proceed on plaintiffs’ constitutional claims and other questions the Supreme Court asked it to consider in *Jennings v. Rodriguez*, 138 S. Ct. 830, 851–52 (2018).

2. On remand, the permanent injunction must be vacated because it lacks a basis in law. A permanent injunction is valid only if, among other things, it is supported by the plaintiff's "actual success on the merits," *Edmo v. Corizon, Inc.*, 935 F.3d 757, 784 (9th Cir. 2019) (citations omitted), and if it is tailored to address the specific injury the plaintiff has successfully proved, *Natural Resource Defense Council v. Winter*, 508 F.3d 885, 886 (9th Cir. 2007).

When the district court issued the original permanent injunction, it was valid: the plaintiffs had achieved "actual success" on the merits of their statutory claims, and the court crafted an injunction designed to remedy those statutory violations. Since then, the nature of this case has been transformed. The plaintiffs have not only lost on the merits of their statutory claims, eliminating the entire foundation for the permanent injunction and subsequent relief, they have filed an amended complaint removing those claims from the case entirely.

3. Therefore, we remand this case to the district court with instructions to vacate the permanent injunction. Petitioners may, of course, move for a preliminary injunction based on their remaining claims. We also direct the district court to follow the instructions we clearly laid out in *Rodriguez IV*, 909 F.3d at 257, which comport with the Supreme Court's instructions in *Jennings*, 138 S. Ct. at 851–52.

**REVERSED AND REMANDED.**

## United States Court of Appeals for the Ninth Circuit

Office of the Clerk  
95 Seventh Street  
San Francisco, CA 94103

### Information Regarding Judgment and Post-Judgment Proceedings

#### Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

#### Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

#### Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

#### Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

##### (1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

##### B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

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**Case Name**

The Clerk is requested to award costs to (*party name(s)*):

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